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9 Attorneys for Defendant

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 GARY A. STEIN

13 Plaintiff,

14 v.

15 RAY MABUS, Secretary of the Navy,

16 Defendant.

No. 12cv0816-H(BGS)

**NOTICE OF MOTION AND MOTION TO
DISMISS FOR FAILURE TO STATE A
CLAIM PURSUANT TO RULE 12(b)(6)**

17
18 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

19 **PLEASE TAKE NOTICE** that on January 14, 2013, before the Honorable Marilyn L.
20 Huff in Courtroom 13, Defendant RAY MABUS will and does hereby move, pursuant to Federal
21 Rule of Civil Procedure 12(b)(6), to dismiss this action on the following grounds:

- 22 1. Plaintiff's action is non-justiciable.
23 2. Neither Count of the First Amended Complaint, ECF No. 37, states a claim upon which
24 relief can be granted.

25 The motion to dismiss will be based on this Notice, the attached Memorandum of Points and
26 Authorities, all of the pleadings, papers, and records on file herein, and upon such argument and
27 further evidence that may be presented to the Court at the hearing on this motion.
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1 DATED: November 30, 2012

Respectfully submitted,

2 STUART F. DELERY
Principal Deputy Assistant Attorney General

3 LAURA E. DUFFY
4 United States Attorney

5 VINCENT M. GARVEY
Deputy Branch Director

6 /s/ Christopher R. Hall
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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2012, I electronically filed a copy of the foregoing Motion. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Matthew J.B. Lawrence
MATTHEW J.B. LAWRENCE